

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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SpectrumIT, Inc.,

Plaintiff,

v.

Case No. \_\_\_\_\_

Charter Communications, Inc., and

Charter Communications  
Holding Company, LLC,

Defendants.

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COMPLAINT

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Plaintiff, SpectrumIT, Inc. ("SpectrumIT"), for its complaint against defendants Charter Communications, Inc., and Charter Communications Holding Company, LLC (collectively "Charter"), states as follows:

**I. Nature of Action**

1. This is a civil action for trademark infringement under 15 U.S.C. § 1051, *et seq.*, and common law.

**II. Jurisdiction and Venue**

2. This court has original jurisdiction under 28 U.S.C. §§ 1331 and 1338.

3. Venue is proper in this district under 28 U.S.C. §§ 1391.

### **III. Parties**

4. Plaintiff SpectrumIT is a Florida corporation, with places of business at 1101 N. Palafox St., Pensacola, Florida and 11345 N. Port Washington Road, Mequon, Wisconsin.

5. Charter Communications, Inc., is a Delaware corporation with a principal place of business in Stamford, Connecticut.

6. Charter Communications Holding Company, LLC, is a Delaware limited liability company with an address of 12405 Powerscourt Drive, St. Louis, Missouri, 63131, and is a subsidiary of Charter Communications, Inc.

7. Spectrum Technology, LLC was formed in January 2000, by Scott Peiffer as its principal, with an office at 3278 Somers Lane, Port Washington, Wisconsin, and began to provide information technology services, including network design, implementation and administration.

8. In October 2002, Spectrum Technology, LLC registered the URL spectrumIT.net.

9. Spectrum Technology, LLC was dissolved in September 2013, and its assets were transferred to SpectrumIT, Inc., which had been incorporated in May of 2012.

10. The mark "SPECTRUMIT" has been used in connection with the provision of information technology services by entities under the control of Scott Peiffer since 2000, first by Spectrum Technology, LLC in 2000, and beginning in 2012 by SpectrumIT, Inc.

11. Since 2012, SpectrumIT has been providing information technology services under the SPECTRUMIT mark in both southeastern Wisconsin and the panhandle region of Florida surrounding Pensacola, Florida.

12. The services currently under the SPECTRUMIT mark include a broad range of network and computer support services, including, among other things, managed IT support services for small and medium businesses (including network, storage, and server infrastructure, as well as desktops, laptops and mobile devices), network security and computer data security for businesses, BriteCloud cloud computing services, BritePhones voip telephony systems, BriteMail email encryption services.

13. SpectrumIT has since 2012 used a predominantly blue color scheme in the promotion of its services, including its webpages, marketing materials, logos, advertising, and employee shirts.

14. Charter is a leading broadband communications company and the second largest cable-television operator in the United States. Charter provides a full range of advanced broadband services, including.

15. The 2017 annual report from Charter Communications, Inc., boasts of 27.2 million customer relationships and annual revenue in excess of \$41 billion.

16. Charter uses the name "Spectrum" directly, through one or more related companies, or both in connection with broadband services and information technology services, and related services in the Pensacola, Florida area and southeastern Wisconsin and elsewhere.

17. Use of the word “Spectrum” in connection with Charter’s services in this District has been under the control and with the approval of Charter Communications, Inc., and Charter Communications Holding Company, LLC.

18. Charter has engaged in major marketing and advertising efforts across multiple platforms and media using “Spectrum” as a service mark and the brand name for its broadband services, information technology services, and related services.

19. For example, Charter displays “Spectrum” as a brand for its services on its website and in social media, such as on Charter’s Facebook page, in white letters on a blue background:



20. Charter also displays “Spectrum” as a brand for its services television and email advertising in white letters on a blue background.

21. Charter’s “Spectrum” mark is confusingly similar to the SPECTRUMIT mark. In fact, the name “Spectrum” and Spectrum’s SPECTRUMIT mark include the identical term “Spectrum.”.

22. Charter’s use of “Spectrum” has been the source of confusion.

23. In fact, SpectrumIT has documented numerous instances of actual confusion since Charter began using the “Spectrum” mark in SpectrumIT’s areas of operation.

24. People have contacted SpectrumIT intending to contact Charter.

25. People have misdirected complaints about Charter's services to SpectrumIT. As a recent example of the continuing nature of misdirected complaints, a gentleman entered a SpectrumIT office on July 10, 2018, noticeably upset, looking for the person in charge, wanting to discuss his old Time Warner Cable/Charter account. After SpectrumIT employees explained that SpectrumIT was not the company he was looking for, the gentleman pointed to the door and asked, "Then how do you explain that?" referring to the SpectrumIT name on the door in a stern manner, questioning the employees' assertion.

26. People have expressed the erroneous belief that Charter and SpectrumIT are related.

27. Charter customers have sent SpectrumIT payments intended for Charter.

28. Charter customers have mistakenly returned Charter equipment to SpectrumIT.

29. Charter's use of "Spectrum" is confusing not only consumers. Even people with long-term relationships with SpectrumIT and its principals have expressed concern that SpectrumIT is now owned by or affiliated with Charter.

30. Because SpectrumIT has used the SPECTRUMIT mark since 2000 and because of the recognition SpectrumIT has received, the SPECTRUMIT mark is strong.

31. In addition, the parties' services are sufficiently similar to cause confusion.

32. SpectrumIT has been a Microsoft Office 365 Cloud Partner, and now Charter has also recently become a Microsoft Office 365 Cloud Partner, with both companies providing Office 365 licensing services.

33. Both parties provide managed cloud services.

34. Both parties provide managed network services.

35. Both parties provide managed wifi services.

36. Both parties provide VoIP solutions.

37. In connection with the services referenced in paragraphs 32 through 37 above, both parties recommend, install and support client solutions, including 24x7 monitoring of hardware and operating systems.

38. The similarity of the parties' services fosters confusion.

39. Charter Communications Holding Company, LLC, meanwhile, has applied for and received twenty-two United States trademark registrations that include the word SPECTRUM:

- SPECTRUM COMMUNITY SOLUTIONS (Reg. No. 5,149,991);
- SPECTRUM BUSINESS (Reg. No. 5,172,050);
- SPECTRUM INTERNET (Reg. No. 5,098,550);
- SPECTRUM VOICE (Reg. No. 5,098,473);
- SPECTRUM REACH (Reg. No. 5,101,071);
- SPECTRUM BUSINESS (Reg. No. 5,028,677);
- SPECTRUM BUSINESS VOICE (Reg. No. 5,014,773);

- SPECTRUM BUSINESS INTERNET (Reg. No. 5,014,772);
- SPECTRUM GUIDE (Reg. No. 4,956,860);
- SPECTRUM BUSINESS TV (Reg. No. 4,952,769);
- CHARTER SPECTRUM INTERNET/VOICE (Reg. No. 4,573,785);
- CHARTER SPECTRUM TV INTERNET (Reg. No. 4,573,784);
- CHARTER SPECTRUM VOICE (Reg. No. 4,752,676);
- CHARTER SPECTRUM INTERNET (Reg. No. 4,618,732);
- CHARTER SPECTRUM TV (Reg. No. 4,618,731);
- CHARTER SPECTRUM (Reg. No. 4,618,730);
- CHARTER SPECTRUM TV | INTERNET | VOICE (Reg. No. 4,591,882);
- CHARTER SPECTRUM VOICE (Reg. No. 4,618,729);
- CHARTER SPECTRUM INTERNET (Reg. No. 4,618,728);
- CHARTER SPECTRUM TV (Reg. No. 4,618,727);
- CHARTER SPECTRUM (Reg. No. 4,618,726); and
- SPECTRUMU (Reg. No. 5,205,956).

40. None of Charter's trademark registrations for marks that include the word SPECTRUM claim first-use dates prior to 2014.

41. Charter filed for registration of these marks and began use of them well after SpectrumIT began use of the SPECTRUMIT mark and established rights in it.

42. Charter did not seek SpectrumIT's consent to use SPECTRUM as a mark.

43. Charter's use of "Spectrum" infringes upon the SPECTRUMIT mark.

44. Charter's conduct constitutes intentional and knowing infringement of the SPECTRUMIT mark.

45. Spectrum has no adequate remedy at law.

### **COUNT I**

#### **False Designations and False Descriptions Under Section 43(a) of the Lanham Act**

46. Plaintiff repeats and realleges the allegations set forth in the preceding paragraphs of this Complaint.

47. By infringing upon the SPECTRUMIT mark, Charter intentionally engaged in conduct that constitutes a false designation of origin in violation of 15 U.S.C. § 1125(a).

48. SpectrumIT owns the SPECTRUMIT mark and has used it continuously in commerce prior to Charter's adoption of the name "Spectrum."

49. Charter's false designation of origin has caused, and is likely to continue to cause, confusion, or to cause mistake, or to deceive as to the affiliation, connection or association of Charter's services with SpectrumIT, or as to the origin, sponsorship, or approval of Charter's services and or commercial activities.

50. SpectrumIT has been injured as a result of Charter's infringing conduct.



51. SpectrumIT has suffered damages as a result of Charter's violation of 15 U.S.C. § 1125(a).

52. Charter's infringing conduct has caused irreparable and immediate injury to SpectrumIT.

## **COUNT II**

### **Common Law Infringement**

53. SpectrumIT repeats and realleges the allegations set forth in Paragraphs 1 through 45 of this Complaint.

54. SpectrumIT first adopted and used its SPECTRUMIT mark as a means of establishing good will and reputation and to describe, identify or denominate particular services rendered or offered by SpectrumIT and to distinguish them from similar services rendered or offered by others.

55. The SPECTRUMIT mark is inherently distinctive and indicates or identifies SpectrumIT as the source of certain services.

56. Charter has commenced use of a nearly identical trade name to indicate or identify similar services rendered by Charter in competition with SpectrumIT in the same trade areas in which SpectrumIT has already established its SPECTRUMIT mark.

57. The SPECTRUMIT mark has been continuously used by SpectrumIT prior to Charter's use of the nearly identical trade name, and therefore SpectrumIT's marks have priority.

58. As a consequence of Charter's actions, customer confusion of source or as to the sponsorship of Charter's services or SpectrumIT's services is occurring and is likely to continue.

59. Charter's actions are causing damage to Spectrum.

### **COUNT III**

#### **Cancellation of "Spectrum" Registrations under 15 U.S.C. § 1119**

60. SpectrumIT repeats and realleges the allegations set forth in Paragraphs 1 through 45 of this Complaint.

61. This is a claim for cancellation of Charter's U.S. trademark registrations for the following 22 marks:

- SPECTRUM COMMUNITY SOLUTIONS (Reg. No. 5,149,991);
- SPECTRUM BUSINESS (Reg. No. 5,172,050);
- SPECTRUM INTERNET (Reg. No. 5,098,550);
- SPECTRUM VOICE (Reg. No. 5,098,473);
- SPECTRUM REACH (Reg. No. 5,101,071);
- SPECTRUM BUSINESS (Reg. No. 5,028,677);
- SPECTRUM BUSINESS VOICE (Reg. No. 5,014,733);
- SPECTRUM BUSINESS INTERNET (Reg. No. 5,014,772);
- SPECTRUM GUIDE (Reg. No. 4,956,860);
- SPECTRUM BUSINESS TV (Reg. No. 4,952,769);
- CHARTER SPECTRUM INTERNET/VOICE (Reg. No. 4,573,785);
- CHARTER SPECTRUM TV INTERNET (Reg. No. 4,573,784);
- CHARTER SPECTRUM VOICE (Reg. No. 4,752,676);

- CHARTER SPECTRUM INTERNET (Reg. No. 4,618,732);
- CHARTER SPECTRUM TV (Reg. No. 4,618,731);
- CHARTER SPECTRUM (Reg. No. 4,618,730);
- CHARTER SPECTRUM TV | INTERNET | VOICE (Reg. No. 4,591,882);
- CHARTER SPECTRUM VOICE (Reg. No. 4,618,729);
- CHARTER SPECTRUM INTERNET (Reg. No. 4,618,728);
- CHARTER SPECTRUM TV (Reg. No. 4,618,727);
- CHARTER SPECTRUM (Reg. No. 4,618,726); and
- SPECTRUMU (Reg. No. 5,205,956).

62. SpectrumIT is the owner of common-law trademark rights in the SPECTRUMIT mark and has not abandoned the mark.

63. SpectrumIT's rights in the SPECTRUMIT mark are senior and prior to Charter's rights in its 22 registered marks that include the word "Spectrum."

64. The above registered "Spectrum" marks, as used by Charter, have caused, and are likely to continue to cause, confusion, mistake or to deceive consumers into believing that Charter's products and services are the same as SpectrumIT, or that Charter's products and services are in some way affiliated with, sponsored, authorized, approved, sanctioned, or licensed by SpectrumIT.

65. The continued registration of Charter's marks identified above is inconsistent with Spectrum's rights in and to the SPECTRUMIT mark and inconsistent with 15 U.S.C. § 1052(d).

66. The continued registration of the above 22 marks is damaging, and likely to continue to damage, SpectrumIT.

67. SpectrumIT believes it will be damaged by continued registration of the above 22 marks and, therefore, seeks the cancellation of Charter's 22 trademark registrations on the basis that they are confusingly similar to the SPECTRUMIT mark.

### **Prayer for Relief**

WHEREFORE, SpectrumIT requests that judgment be entered in its favor and against Charter as follows:

- a. Preliminarily and permanently enjoining Charter's use of "Spectrum" as a name or service mark for broadband services, information technology services or related services;
- b. Awarding SpectrumIT damages, Charter's profits, and SpectrumIT's attorneys' fees and costs, and that this award of damages and profits be tripled pursuant to 15 U.S.C. Section 1117;
- c. Awarding SpectrumIT any additional damages, profits or attorneys' fees available on Count II of this Complaint;
- d. Cancelling Charter's United States trademark registrations bearing "Spectrum" as identified in Count III and pursuant to 15 U.S.C. § 1119; and
- e. Ordering or awarding SpectrumIT any other such relief the Court deems just and proper.

## **JURY DEMAND**

Plaintiff hereby demands a jury trial of all issues of fact alleged and not admitted by defendants.

September 20, 2018

/s/ John P. Fredrickson  
John P. Fredrickson  
Wis. State Bar No. 1009063  
Boyle Fredrickson, S.C.  
840 N. Plankinton Avenue  
Milwaukee, WI 53203  
(414) 225-9755 (Office)  
jpf@boylefred.com  
*ATTORNEY FOR SPECTRUMIT, INC.*